IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO.141 OF 2002 AND CRIMINAL MISCELLANEOUS APPLICATION NO.142 OF 2002.

CRIMINAL MISC. APPLICATION NO.141 OF 2002

Mr. Cornally Peer,
presently lodged in judicial
custody, at Judicial
Lock-Up, Panaji ...APPLICANT.

Versus

STATE
through P.I.
C.I.D./Crime Branch P.S.
Panaji, Goa ... RESPONDENT

Mr. S.G. Dessai, Sr. Advocate, with Mr. Arun B. de Sa, Advocate,for the Petitioner.

Mr. A.P. Lawande, Public Prosecutor, for the Respondent State.

CRIMINAL MISC. APPLICATION NO.142 OF 2002

Mr. K.K. Mohanan,
presently lodged in
judicial custody,
at Judicial Lock-Up,Panaji ... APPLICANT

versus

State
through P.I.
C.I.D./Crime Branch P.S.,
Panaji, Goa ...RESPONDENT

Mr. S.G. Dessai, Sr. Advocate, with Mr. Arun B. de Sa, Advocate,for the Applicant.

Mr. A.P. Lawande, Public Prosecutor, for the Respondent State.

CORAM : P.V. KAKADE,J.

DATED : OCTOBER 24, 2002.

ORAL ORDER

Both these Applications arise out of Orders passed by the learned Sessions Judge, North Goa, Panaji, in Bail Application No.320 of 2002 and Bail Application No.321 of 2002 rejecting the Applications for Bail by the Petitioners involved.

2. I heard Mr. Surendra Dessai, the learned Counsel for the Petitioners as well as Mr. Lawande, the learned Public Prosecutor and perused the record.

The facts involved in these Petitions, in brief, are thus:

On 25-02-2002, Shri G.P.Chimulkar, Joint Secretary (Finance) lodged complaint to the effect that some unknown persons in connivance with Excise Officials had forged documents such as N.O.Cs for import of Extra Neutral Alcohol and import permits which were fraudulently prepared under signatures of Smt. Madhura Naik, the then Assistant Commissioner of Excise on six Import Permits, falsely prepared in favour of M/s Laxmi Distilleries, Verem,Bardez-Goa and six cases of forgery of signatures of Ashok Desai, Assistant Commissioner of Excise on Import

permits, falsely prepared in favour of M/s National Breweries, Corlim, Ilhas-Goa and signature of Ashok Desai and on N.O.C. dated 21-11-2001 prepared in favour of M/s Tetra Queens Distilleries, Lessee of M/s Rhea Distilleries, Nuvem, Salcete.

On the basis of the said complaint, formal F.I.R. came to be lodged for commission of the offences punishable under Sections 468, 469, 471, 420, 120-B of the I.P.C. and under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The Petitioner in Application No.141 of 2002 is the Managing Director of M/s Tetra Queen Distilleries and Breweries Private Limited and the Petitioner in Application No.142 of 2002 is the Manager of the said Distilleries.

3. Mr. Dessai has submitted that so far as the provisions of Prevention of Corruption Act are concerned, those are not attracted to the cases of the present Petitioners as they are the functionaries of the Private Limited Companies and, therefore, rejection of their bail on that count is not justified. Mr. Lawande has clarified the point submitting that they are concerned with the said provisions of the Prevention of Corruption Act by virtue of Section 120-B of the I.P.C. due to the

alleged involvement of certain Government Servants, i.e. Excise Officials in the alleged racket involved in the said offences. Be that as it may, the fact remains that none of the Petitioners admittedly are public servants and, therefore, in that context, the provisions of Prevention of Corruption Act would not be applicable to their case so far as consideration for bail is concerned.

4. The State has filed its reply wherein the main contention is that the Applicants are not cooperating with the investigation and are not willing to disclose the names of the Excise Officials who are involved in the racket and, as such, the accused are required for further investigation. It is also submitted that the Applicants are not permanent residents of Goa and if released on bail, they are likely to jump the bail and would not be available for further investigation as well as trial. Another objection raised on behalf of the State is that there is likelihood of tampering with the evidence.

5. Having considered all the relevant aspects and circumstances involved in the case, there cannot be any doubt that the offence is of a serious nature. However, it also must be taken into account

that the Petitioners are no more required in Police custody and they are already in judicial custody for the last about 10 days or so. Furthermore, the argument cannot be accepted to the effect that the names of the involved Excise Officials are required to be obtained from the Petitioners. It is needless to mention that they cannot be forced to give any names of any Officers allegedly involved in the case. Moreover, the Excise Officers who must be involved in the racket are bound to be known to the Investigating Officers in view of the fact that particular Officers are fixed for particular duties in the distilleries as well as at various points of inspection. Moreover, it must also be borne in mind that the very nature of the offence is such that it will have to be established materially on the basis of the documentary evidence and for that purpose, tampering with such documentary evidence is not likely even if the Petitioners are released on bail. The remaining objection that the Petitioners are likely to jump the bail also cannot be seriously taken in view of their positions in the said business and Mr. Dessai has made a statement to the effect that they are residents of Goa and are prepared to furnish their addresses to the Investigating Officers so as to make them available for further investigation if and when required by them.

6. In view of this situation, I do not see any reason as to why the plea for bail should be rejected, especially when it can be seen from the record that there is no likelihood of tampering with any evidence and that they would be available for further investigation and trial if and when required in due course. Hence,I pass the following **Order:**

Both the Petitioners, namely, Mr.Cornally Peter and Mr.K.K. Mohanan shall be released on bail on furnishing personal bond for Rs.25,000/- with one surety for further like amount, to the satisfaction of the Special Court, Panaji, with conditions that:

(1) They shall furnish their residential address of Goa to the Investigating Officer immediately;

(2) They shall make themselves available for investigation if and when required by the investigating machinery in connection with these offences;

(3) They shall not leave the territory of Goa without prior permission of the Special Court, Panaji;

(4) They shall not make any attempt to tamper with the evidence in any manner whatsoever.

7. With these directions, both the Petitions stand disposed of.

P.V. KAKADE,J.

ac.